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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,446	04/20/2004	Kazumi Minoguchi	0051-0226PUS1	2718
2292 7590 09/30/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER SEVERSON, RYAN J				
ART UNIT		PAPER NUMBER		
3731				
NOTIFICATION DATE		DELIVERY MODE		
09/30/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/827,446

Applicant(s)

MINOGUCHI ET AL.

Examiner

Ryan Severson

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 11-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

1. Examiner notes that applicant has added new claim 17. However, since claim 17 depends from withdrawn claim 1, it is also withdrawn from further consideration.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata et al. (Des. 368,965) in view of Suchowski et al. (6,305,326).** Nakata reference discloses the apparatus substantially as claimed, including first and second tooth-hardening members each having projections and a gripping opening. However, Nakata reference does not disclose the first and second tooth-hardening members have different hardnesses. Attention is drawn to Suchowski reference, which teaches different portions of a chew toy/device may be made of materials of different hardnesses to allow greater durability of the device while still having a soft chewing section for increased chewing pleasure (see column 1, lines 33-41 and column 2, lines 33-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the first tooth-hardening member of Nakata reference made of a harder material than the second tooth-hardening member, as taught by Suchowski reference, for increased chewing pleasure.

4. **Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata et al. (Des. 368,965) in view of Suchowski et al. (6,305,326) as applied to claim 6 above, and further in view of Monaco (2,532,116).** The combination of Nakata and Suchowski references does not specifically disclose colored balls inside an opening with a transparent cover. Attention is drawn to Monaco reference, which teaches the use of colored balls (18) inside an opening with a transparent cover on a teething device to enhance the entertainment value of the device to the child. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include an opening with colored balls in the device of the combination of Nakata and Suchowski references, as taught by Monaco reference, to enhance the entertainment value of the device to the child.

5. **Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata et al. (Des. 368,965) in view of Suchowski et al. (6,305,326) and Monaco (2,532,116) as applied to claim 7 above, and further in view of Ripley (1,117,093).** The combination of Nakata, Suchowski, and Monaco references does not disclose holes in the transparent cover. Attention is drawn to Ripley reference, which teaches holes or openings can be formed in a member that contains balls to increase the noise created by the balls tumbling in the open space to enhance the entertainment value of the device to the child. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the openings of Ripley reference with the cover of the combination of Nakata, Suchowski, and Monaco references to enhance the entertainment value of the device to the child by creating more noise.

Response to Arguments

6. Applicant's arguments filed 26 June 2008 have been fully considered but they are not persuasive.
7. In response to applicant's argument that Nakata and Suchowski fail to disclose a "tooth-hardening apparatus", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.
8. Applicant also argues the combination of Nakata and Suchowski is improper because Nakata's device is for children and Suchowski's device is for dogs. However, this is immaterial to the combination made, as softer portions in any chewing device (whether it is for dogs or children) are shown to be known in the art. Therefore, the claimed invention appears to merely be a combination of known prior art elements.
9. In further support of this argument, Examiner draws applicant's attention to US Patent Application Publication 2003/0181948 to Dunn et al., which discloses some portions of a teething/chewing device for babies has some portions that are softer than adjacent portions (see paragraphs 20 and 21).
10. Further, the specific structure of Suchowski's device has not been relied upon in the rejection and therefore arguments in that regard are not persuasive.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
13. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Severson whose telephone number is (571)272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.
15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. S./
Examiner, Art Unit 3731

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731